

CITY OF HAYWARD

AGENDA REPORT

AGENDA DATE 11/19/02

AGENDA ITEM _____

WORK SESSION ITEM WS 2

TO: Mayor and City Council

FROM: Director of Community and Economic Development

SUBJECT: Revisions to the Community Preservation Ordinance

RECOMMENDATION:

It is recommended that the City Council review and comment on this report.

BACKGROUND:

The Community Preservation Program was initiated in Fiscal Year 1989-90 with two primary objectives: to promote pride in Hayward's neighborhoods and to improve the aesthetics of Hayward. The program was designed to address health and safety concerns and protect and improve property values. The program has grown over time to become the enforcement agent for a variety of ordinances, including the Community Preservation Ordinance, the Zoning Ordinance, the Weed Abatement Ordinance, the Graffiti Ordinance, the Sign Ordinance, the Vehicle Abatement Ordinance (only for private property), and the Smoking Ordinance.

In 1995, pursuant to Council concerns regarding the level of service, the City Council adopted several administrative streamlining measures to the Community Preservation (CP) Ordinance and instituted a schedule of fees in an attempt to make the program more effective and speed the timelines for compliance. As part of staff's current discussions on upgrading neighborhoods, we have identified a number of proposed changes in the CP Ordinance that will streamline and improve enforcement efforts.

Proposed Changes to the Community Preservation Ordinance

The major changes proposed are as follows:

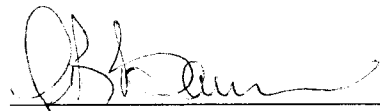
- The minimum time period within which the violation must be corrected has been reduced from seven days to three days. Staff's experience is that there are a number of community preservation violations that can be corrected by the owner more quickly than seven days.
- Violations of any code or ordinance adopted by the City could now be defined as a public nuisance. For example, City code violations, such as existing structures built without permits, can be noticed as community preservation violations and monitored efficiently to ensure that the owner will obtain building permits;

- Vague language, such as “unreasonable period of time,” has been deleted;
- The following items have been included in the definition of nuisances:
 - fences that are in disrepair;
 - fuel tanks, storage cylinders for any type of gas, used motor oil, or other such containers;
 - construction materials on the property for more than 60 consecutive days;
 - buildings where 50% or more of any painted surface of the building’s exterior observable from public view is peeling or lacks weather protection due to lack of paint or other approved protective covering; such surface must be painted or refinished to match the adjacent walls of that building.
 - buildings whose doors or windows are covered with boards or tarps or plastics on the outside; materials such as tarps or similar articles cannot be placed roofs for more than 30 days;
 - glass windows or doors that have been broken or cracked and which may be held together with tape;
 - deteriorated, crumbling or loose plaster; deteriorated or ineffective waterproofing of exterior walls, roof, foundations or floors; broken, rotted, split or buckled exterior wall, stair or roof coverings;
 - automobiles, trucks, boats, trailers, and other vehicles of similar kind and use which are displayed for sale on any vacant improved or unimproved property, except for licensed car dealer sales lots;
 - commercial vehicles, over 6,000 pounds gross weight, parked or stored in any residential district;

Proposed Changes to the Master Fee Resolution

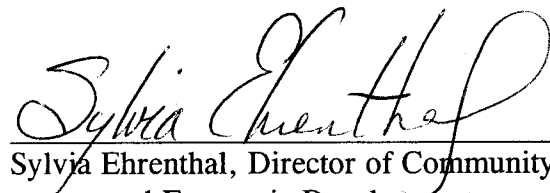
The Community Preservation violations correction process is structured to allow a violator one chance to correct a violation without a fee being imposed. Council adopted this strategy for several reasons: it encourages self-correction, promotes good will and neighborhood harmony, and provides an opportunity to fix the problem for those who are unaware of the law. However, there are currently no penalties in the Ordinance to encourage speedy abatement of violations or to penalize owners or tenants who do not show up for agreed upon appointments more than once. Should Council be receptive to imposing penalties in addition to the standard fees charged, staff will develop a proposed amendment to the Master Fee Resolution.

Prepared by:



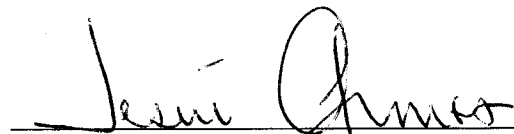
Ann R Bauman, Neighborhood and
Economic Development Manager

Recommended by:



Sylvia Ehrental, Director of Community
and Economic Development

Approved by:



Jesús Armas, City Manager

Exhibits:

Revised Community Preservation Ordinance

ARTICLE 7
COMMUNITY PRESERVATION AND IMPROVEMENT

Section	Subject Matter
5-7.00	FINDINGS
5-7.10	DEFINITIONS
5-7.20	PUBLIC NUISANCE
5-7.30	ABATEMENT NOTICE
5-7.35	MANNER OF GIVING ABATEMENT NOTICE
5-7.40	ADMINISTRATIVE HEARING
5-7.50	INSPECTION WARRANTS
5-7.60	ABATEMENT WARRANTS
5-7.65	SUMMARY ABATEMENT BY CITY
5-7.70	ABATEMENT OF NUISANCES
5-7.80	ACCOUNT AND REPORT OF COST
5-7.90	NOTICE OF REPORT
5-7.100	CITY COUNCIL HEARING
5-7.110	COLLECTION ON TAX ROLL
5-7.120	PROCEDURE NOT EXCLUSIVE; VIOLATION AN INFRACTION

ARTICLE 7

COMMUNITY PRESERVATION AND IMPROVEMENT (Amended by Ord. 95-07, adopted February 7, 1995)

SEC. 5-7.00 FINDINGS. The City Council finds and declares that the regulations set forth in this article are necessary in order to eliminate conditions on properties in the City which are detrimental or threaten injury or damage to the health, safety, and welfare of residents thereof, to neighboring occupants or properties, and the municipal welfare.

SEC. 5-7.10 DEFINITIONS. For the purposes of this article, certain words and phrases are defined and shall be construed as set out in this section. Unless specifically defined below, words or phrases used in this article shall be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application.

- (a) BUILDING shall mean any structure used or intended for supporting or sheltering any use or occupancy.
- (b) ENFORCEMENT OFFICER shall mean the Director of Community and Economic Development or his or her designee or other employee or official appointed and designated by the City Manager to administer the provisions of this article. For this purpose he/she shall have the authority to issue citations, and he/she may enter upon any premises in the city, except the interior of an occupied dwelling, without prior authorization or without a warrant, for the purpose of inspection and enforcement.
- (c) GRAFFITI shall mean the unauthorized letters, words, symbols, figures and marks placed on buildings and objects on a private property, public property or the public right-of-way by using paint or marking with ink, chalk, crayon, dye or other similar substances, or by cutting or scraping with any tool or instrument.
- (d) HEARING OFFICER shall mean the City Manager or his/her designee authorized to conduct hearings pursuant to this chapter.

- (e) INOPERATIVE shall mean any vehicle that: (1) cannot be immediately started and driven under its own power on the streets and highways or (2) is in an unsafe condition or (3) is in any other condition specified in the California Vehicle Code which prohibits its placement and/or movement on the public streets or highways.
- (f) NUISANCE shall mean any thing or condition which threatens injury or damage to the health, safety, welfare or property of members of the public, which obstructs the free use of property of others or interferes with the comfortable enjoyment of life or property; graffiti; or any violations of the Health and Safety Code;
- (g) OWNER shall mean any person owning property as shown on the last equalized assessment roll for City taxes and also includes the lessee, tenant or other person having control or possession of the property unless otherwise specified.
- (h) PLANTER STRIP shall mean the area between the curb and sidewalk on street frontage.
- (i) PROPERTY shall mean all real property, improved or unimproved, including but not limited to residential, industrial, commercial, agricultural, open space and other real property the area of such property includes front yards, side yards, driveways, walkways, alleys and sidewalks, and shall include any building or other structure, whether fixed or moveable, located on such property.
- (j) RESPONSIBLE PARTY shall mean the owner, agent, manager, lessee, tenant or any other person having control or possession of the property, whether for residential, industrial, commercial or other purpose.

SEC. 5-7.20 PUBLIC NUISANCE. It shall be unlawful for any person owning, leasing, renting, occupying, or having charge or possession of any property in the City to maintain or to allow to be maintained such property in a condition detrimental to public health, safety, or general welfare or in a condition which violates any code or ordinance adopted by the City.

Every owner of real property within the City shall manage that property in such a manner to avoid violation of this code. The property owner shall be liable for violations thereof, regardless of any contract or agreement with any third party regarding the property. Where there are multiple property owners, the property owners shall have joint and several liability. The storing of items or maintaining any of the following conditions is hereby declared to be detrimental to public health, safety, or general welfare and thus constitutes a public nuisance:

- (a) The accumulation and/or piles of garbage, litter, bins, boxes, bags, dirt, or debris;
- (b) Junk, trash, salvage materials, scrap metal, bottles, cans and wire, or other debris kept on the property;
- (c) Broken or discarded furniture, household equipment, shopping carts and goods and furnishings on the property that are not designed for outside use in all types of weather;
- (d) Fences with broken boards, rotted-out posts, or fences that are leaning, dilapidated, or in disrepair that are contiguous with any public street, sidewalk, or other public place;
- (e) Fuel tanks, storage cylinders for any type of gas, used motor oil, or other such containers;
- (f) Graffiti on public or private property;
- (g) Construction materials on the property for more than 60 consecutive days;
- (h) Washers, dryers, refrigerators, freezers or other appliances functioning or abandoned or similar items in front yards, side yards, and rear yards or on

unenclosed porches in front yard or side yard. All water heaters must be in enclosures.

- (i) Clotheslines or clothes hanging in front yards, side yards, porches, or balconies; however, clotheslines and clothes hanging in rear yards are permitted;
- (j) Buildings where 50% or more of any painted surfaces of the building's exterior observable from public view is peeling; or lacks weather protection due to lack of paint or other approved protective covering; such surfaces must be painted or refinished to match the adjacent walls of that building.
- (k) Buildings whose doors or windows are covered with boards or tarps or plastics on outside;
- (l) Glass windows or doors that have been broken or cracked and which may be held together with tape;
- (m) Materials such as tarps or similar articles on roofs for more than 30 days.
- (n) Deteriorated, crumbling or loose plaster; deteriorated or ineffective waterproofing of exterior walls, roof, foundations or floors; broken, rotted, split or buckled exterior wall, stair or roof coverings;
- (o) Attractive nuisances or any dangerous conditions including abandoned, broken or neglected equipment or machinery, or other apparatus, tools and vehicle repair equipment;
- (p) Overgrown trees or vegetation that obstruct public right of way or sidewalk or obscures the necessary view of drivers or pedestrians on public streets or private driveways; or overgrown or unsightly vegetation or weeds which may harbor rats, vermin, or other rodents;

- (q) Dead trees or dead plant material;
- (r) Weeds that exceed four inches in any yard or planter strip;
- (s) Operable boats, trailers, and other vehicles of similar kind and use stored in the front yard on the property which are not entirely located on the designated paved driveway area that provides direct access to the garage from the street, perpendicular to the street or unless the driveway is curved;
- (t) Inoperable, wrecked, dismantled, or abandoned boats, trailers, cars, motorcycles, and/or other vehicles of similar kind and use on the property; which are stored in yards and are inoperable or left in a state of partial construction or repair;
- (u) Unmounted campers or Camper shells which are left on the property visible from the public street;
- (v) Automobiles, trucks, boats, trailers, and other vehicles of similar kind and use which are displayed for sale on any vacant improved or unimproved property, except for licensed car dealer sales lots;
- (w) Commercial vehicles, over 6,000 pounds gross weight, parked or stored in any residential district;
- (x) Use of any vehicle or portion thereof used for sleeping or living purposes, except vehicles within an approved mobile home district.

SEC. 5-7.30 ABATEMENT NOTICE. Whenever the Enforcement Officer determines that any property within the City is being maintained in violation of one or more of the provisions

of this article, the Enforcement Officer shall give written notice ("Notice to Abate") to the owner of said property stating the section(s) being violated. The notice to abate shall set forth a reasonable time limit for the owner to abate the condition, which shall be no less than three calendar days, or not more than 14 calendar days from the date of the notice, and which may also set forth suggested methods of correcting the violation(s). At the discretion of the Enforcement Officer, an extension(s) not to exceed 14 days at a time, may be granted for good cause for correcting the violation(s).

The notice to abate shall direct the property owner either to abate the violation(s) or request an administrative hearing within seven calendar days from the date of the notice to show cause why the violation(s) should not be abated by the City at the property owner's expense. The notice shall also indicate that if the nuisance is abated by the City, the costs thereof will be assessed upon the property, and if not paid, will constitute a lien upon the property until paid. The notice shall also include a description of any inspection costs the City Council may adopt by resolution from time to time relating to enforcement of this article.

SEC. 5-7.35 MANNER OF GIVING ABATEMENT NOTICE. A copy of the notice provided for in this section shall be served on the property owner in person, service will be made, in accordance with State law, to the owner's address as it appears on the last equalized assessment roll or as known to the Enforcement Officer. Service shall be deemed complete at the time notice is personally served, transmitted or deposited in the mail. The failure of any person to receive notice properly given shall not affect the validity of any proceedings hereunder.

SEC. 5-7.40 ADMINISTRATIVE HEARING. Any Owner may request an Administrative Hearing. The purpose of an Administrative Hearing is to allow the Owner to dispute the factual findings of the violation(s). If a Hearing is requested, at the time fixed for the Administrative Hearing, the Hearing Officer shall hear and consider all relevant evidence, objections, or protests offered on behalf of the owner which to show why the condition should not be abated. The Hearing Officer may also consider rebuttal evidence offered by the City. The Hearing may be continued from time to time. If at the conclusion of the hearing,

the Hearing Officer is satisfied that the condition exists and concludes that it should be abated, he or she shall so advise the persons attending the hearing, either orally or in writing.

SEC. 5-7.50 INSPECTION WARRANTS. Whenever there exists cause to suspect a violation of any provision of this Ordinance, and the owner refuses to permit entry for investigation, the Enforcement Officer may seek to obtain a warrant issued by the Superior Court of Alameda County for the purposes of inspection.

SEC. 5-7.60 ABATEMENT WARRANTS. Once Notice has been given of a violation of any provision of this Ordinance, and the owner does not abate or cause to abate the violation as required, the Enforcement Officer may seek to obtain a warrant issued by the Superior Court of Alameda County for the purposes of abatement.

SEC. 5-7.65 SUMMARY ABATEMENT BY CITY. Violations that constitute an imminent danger to the public health or safety, the Enforcement Officer shall have the authority to abate the condition or cause the condition to be abated summarily and without notice. The expenses of such abatement shall become a lien on the property and, if unpaid, collected as provided herein.

SEC. 5-7.70 ABATEMENT OF NUISANCES. If the nuisance is not abated as ordered within the abatement period, the Enforcement Officer shall cause the same to be abated by such City employees or private contractors the Enforcement Officer may authorize to enter upon the property for such purposes. The expenses of such abatement, including administrative expenses, of abating the nuisance shall be billed to the owner and shall become due and payable 30 days thereafter. The term "administrative expenses" shall include, but not be limited to, personnel costs, both direct and indirect; costs incurred in documenting the nuisance; the actual expenses and costs of the City in the preparation and dissemination of notices, specifications, and contracts and in inspecting the work; and the costs of printing and mailing the notices required hereunder and the costs of imposing a lien, if that becomes necessary.

SEC. 5-7.80 ACCOUNT AND REPORT OF COST. The Enforcement Officer shall keep an account of the cost of abating the nuisance on each separate lot or parcel of land where the work is done by the City, as well as any inspection charges which remain unpaid, and shall render an annual itemized report in writing to the City Council showing the cost of abatement, including any salvage value, and outstanding inspection charges.

SEC. 5-7.90 NOTICE OF REPORT. The City Clerk shall post a copy of the report and assessment list on the bulletin board designated for the posting of agendas for City Council meetings together with a notice of filing thereof and of the time and place when and where it will be submitted to the City Council for hearing and confirmation, notifying property owners that they may appear at such time and place and object to any matter contained therein. A like notice shall also be published once in a newspaper of general circulation that is published and circulated within the City. The posting and first publication of the notice shall be made and completed at least 10 days before the time the report is considered by the City Council.

SEC. 5-7.100 CITY COUNCIL HEARING. At the time and place fixed for receiving and considering the annual report, the City Council shall hear the same together with any objections which may be raised by any person liable to be assessed for the work of abating the nuisance and related charges, and the Enforcement Officer shall attend the meeting with his or her record thereof, and upon the hearing, the Council may make the modifications in the proposed assessments as it may deem necessary, after which the report and assessment list shall be confirmed by resolution.

The amount of the cost of abating the nuisance, including inspection charges and administrative expenses, shall constitute a special assessment against the respective lots or parcels of land and after being confirmed shall constitute a lien on the property for the amount of the assessments until paid.

SEC. 5-7.110 COLLECTION ON TAX ROLL. After confirmation of the report, a copy shall be given to the City Director of Finance who may receive the amount due on the abatement cost and issue receipts at any time after the confirmation and until a list of unpaid

assessments shall have been sent annually to the County Auditor for effecting collection on the tax roll at the time and in the manner of ordinary municipal taxes. The descriptions of the parcels reported shall be those used for the same parcels on the County Assessor's map books for the current year. All laws and ordinances applicable to the levy, collection, and enforcement of City taxes are hereby made applicable to such special assessment and the lien of the assessment shall have priority of the taxes with which it is collected.

SEC. 5-7.120 PROCEDURE NOT EXCLUSIVE; VIOLATION AN INFRACTION. The procedures for abatement set forth herein shall not be exclusive and shall not in any manner limit or restrict the City from enforcing other City ordinances and regulations or abating public nuisances in any other manner provided by law. Nothing in this article shall be deemed to prevent the City Council from ordering the commencement of a civil proceeding to abate a public nuisance pursuant to applicable law or from pursuing any other remedy available under applicable law. Violation of the provisions of this article constitutes an infraction, as set forth in Chapter 1, Article 3 of the Hayward Municipal Code.